



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew Tobias, Treasurer
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

RE: MUR 5080

Dear Mr. Tobias:

On August 22, 2000, the Federal Election Commission (the "Commission") found that there is reason to believe that the Democratic National Committee (the "Committee") and you, as treasurer, violated 2 U.S.C. § 434(b), which is a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 5080

RESPONDENT: Democratic National Committee and Andrew Tobias, as
treasurer

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. LAW

The Federal Election Campaign Act of 1971, as amended, defines a contribution to include a gift, subscription, loan . . . or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(1). "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii). The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but does not include the Federal Government or any authority of the Federal Government. 2 U.S.C. § 431(11).

Each treasurer of a political committee shall file detailed reports of its receipts and disbursements. 2 U.S.C. §§ 434(a)(1) and 434(b). Each in-kind contribution shall be reported as both a contribution and an expenditure. 11 C.F.R. §§ 104.13(a)(1) and (2).

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B. ANALYSIS

The Audit Report of the 1996 Democratic National Convention Committee (the "Convention Committee") noted that published reports indicated that the Democratic National Committee (the "DNC") assumed approximately \$25,000 in hotel bills incurred at the Democratic National Convention because of "concerns that a donor who originally paid the bill might have used foreign funds." See Audit Report of the Convention Committee at p. 20. The donor, Mr. Gregory Cortes, has been a volunteer fundraiser for the DNC. The hotel bills related to suites for Marvin Rosen, the Finance Chairman of the DNC, and R. Scott Pastrick, the Convention Committee Treasurer and DNC Treasurer, and two additional rooms at the Four Seasons Hotel in Chicago, Illinois. During the audit fieldwork, the Audit staff requested documentation regarding these expenses and asked whether a portion of the expenses, such as the expenses for Mr. Pastrick, relate to the convention. The Convention Committee responded with a memorandum that stated, "during the week of the convention, Mr. Pastrick's sole function, other than a five minute speech at the Monday Convention session, was to serve in a fundraising capacity for the DNC." *Id.* at 21. The Convention Committee also stated that during the week of the convention, Mr. Pastrick did not have any responsibilities as treasurer of the Convention Committee, and provided a copy of Mr. Pastrick's speech to the convention.

The Exit Conference Memorandum requested documentation, such as the hotel bills and a copy of Mr. Pastrick's appointment calendar during the convention week. The Convention Committee refused to submit such documentation, but responded that "it is fundamental to the Convention financing system that the costs of national party fundraising at the Convention should not be paid for with public Convention grant. . . . Thus, it is clear that no part of Mr. Pastrick's expenses should have been allocated to the [Convention Committee]." *Id.*

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Nevertheless, the Audit Report noted that the hotel expenses for Mr. Pastrick and the expenses for the two additional rooms should be allocable, in part, to the Convention Committee.

The Convention Committee asserted that Mr. Pastrick's hotel expenses should have been paid by the DNC since his responsibilities during the convention week were to raise funds for the DNC. Although public funds should not be used to pay the costs of national party fundraising, *see* 59 Fed. Reg. 33608 (June 29, 1994), the Commission has also noted "instances in which the national committee has sought to pay for expenses that are clearly convention-related." 59 Fed. Reg. 33608 (June 29, 1994). Events that are "clearly separate from the convention such as fundraising for the party committees" are not considered convention expenses and should not be paid for with public funds. 59 Fed. Reg. 33609 (June 29, 1994). However, the Convention Committee did not provide documentation which was requested that would support this conclusion, such as Mr. Pastrick's itinerary during the convention week. Moreover, it appears likely that Mr. Pastrick did perform some duties as treasurer of the Convention Committee during the convention week, which was the important time of the year for the Convention Committee. If Mr. Pastrick performed any duties as treasurer of the Convention Committee during the convention week, his hotel expenses should have been allocated, in part, to the convention. 11 C.F.R. § 9008.7.

The Convention Committee also did not provide information regarding the two additional hotel rooms that were paid for by the DNC, such as the purpose for reserving those rooms and the activities that were conducted in those rooms. These expenses for the additional hotel rooms may also need to be allocated, in part, to the convention. 11 C.F.R. § 9008.7.

Because the Convention Committee failed to allocate Mr. Pastrick's expenses and the expenses for the two additional rooms, the DNC made an apparent in-kind contribution to the

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Convention Committee. It appears that the DNC failed to report the in-kind contribution to the Convention Committee on its disclosure reports to the Commission. 2 U.S.C. § 434(b).

Therefore, there is reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434(b) by failing to report this in-kind contribution to the 1996 Democratic National Convention Committee, Inc.

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